



NATIONAL ASSOCIATION
OF REALTORS®

The Voice for Real Estate®

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September 27, 1996

Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

*RE: Further Notice Proposed Rulemaking in the matter of Implementation of
Section 207 of the Telecommunications Act of 1996. Preemption of Local Zoning
Regulation of Satellite Earth Stations.*

Dear Secretary:

The NATIONAL ASSOCIATION OF REALTORS is pleased to submit comments on the Commission's Further Notice of Proposed Rulemaking in the matter of Federal Preemption of Local Zoning regulations as it applies to satellite earth station antennas.

NAR represents over 700,000 real estate professionals engaged in every aspect of the real estate business, including the owners and managers of multifamily rental and commercial property. Our members recognize the need and demand for a diverse and competitive telecommunications marketplace and agree that the Telecommunications Act of 1996 provides for much needed reform. It creates an environment that encourages competition among service providers to provide the most diverse and sophisticated services available.

We applaud the Commission's efforts to seek additional comments on the issues that affect the use of private property. The Commission recognized that the analysis used when promulgating the rule as it applies to viewers with a direct or indirect ownership interest in the property does not apply when addressing the use of common property, rental property or the leasing of commercial space. We agree with this assessment and offer the following comments to support our position.

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List A B C D E

Common Areas

Typically, common areas in a condominium and townhouse communities include walls, roofs, courtyards, recreation areas such as pools, and tennis courts, parking lots and hallways. No one owns a specific portion of the common area but they are equally owned by the members of the association. Due to this shared property arrangement, associations are charged with the responsibility of managing these areas. To install a satellite dish or any other appurtenance for the benefit of one person in any of these areas, could unfairly limit the use of that property for all other owners.

Homeowner and condominium association rules include provisions that are aimed to protect the investment of the individual owners. Without an organized method of delivery for satellite services to a condominium or commercial property which is managed by the owners or an association, the opportunity for property damage increases. Maintenance costs of the common areas increase dramatically as service providers are given freedom to drill holes with little or no concern over the increasing burden to the structural integrity of the property. The resulting increased maintenance costs will inevitably be passed on to the individual owners in the form of higher monthly assessments.

These arguments are not meant to provide a means to deny consumers access to these services. In fact, NAR recognizes providing such services increases the marketability of some properties. However, the association or any other body charged with maintaining the integrity of the property should be allowed to control the selection of vendors and the installation process.

Rental Property and Lease Agreements

In the August 6, 1996 ruling on Section 207, the FCC prohibits restrictions on properties where the occupant has an indirect or direct ownership in the property. This effectively guarantees the property owner the right to install a satellite antenna on the property, regardless of restrictions such as homeowners association rules. Conversely, it also guarantees the occupant the right not to install equipment on his property. This right should be extended to the property owner who does not live in the unit or house where he maintains ownership but instead rents to a tenant. In a landlord-tenant situation, it is not unreasonable to prohibit the tenant from painting the house or making structural changes to it. Therefore, if the owner chooses to restrict the installation of a satellite antenna by a tenant, he should have the right to do so, especially if the tenant signs an agreement obligating himself to these terms. This agreement should be honored just as any other legal agreement between two parties.

To imply that competition in the telecommunication industry is being stifled by individual property owners who do not wish to have holes drilled into their walls and unsightly cable wires draped across their walls to satisfy a tenant who does not maintain a long-term interest in the property, is unreasonable. Property rights should not be sacrificed for the sake of competition among service providers.

Commercial Property

For the same reasons property rights should be guaranteed in residential housing landlord tenant situations, owners of commercial property should also enjoy the right to protect their investments. Commercial property agreements include restrictions that serve to protect their investment while offering services to tenants that will increase the marketability of the property.

These restrictions are not intended to limit customer choices but to allow the building owners the right to negotiate with service providers and to select those that best fit their needs.

To allow unrestricted access to multiple providers without regard for vendor selection scheduling, and structural limitations, can cause serious damage to the property and result in unintended safety risks to owners and tenants alike.

We thank you again for the opportunity to offer our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen D. Driesler", written over the word "Sincerely,".

Stephen D. Driesler
Senior Vice President & Chief Lobbyist
Government Affairs